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FILED

MAY 11 2016

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES EX REL. MARINA
TRUBNIKOVA, LEONID TRUBNIKOV AND
SVETLANA MAHKARINETS,

Plaintiffs,

v.

MARK F GENKIN, ILIA MARK GUENKIN,
JULIA VCHERASHNY AND DOES 1
THROUGH 50, INCLUSIVE,

Defendants.

CASE NO. C 15-5681 LB

**UNITED STATES' NOTICE OF ELECTION TO
DECLINE INTERVENTION; ~~PROPOSED~~
ORDER TO UNSEAL**

FILED UNDER SEAL

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court of its decision not to intervene in this action.

Although the United States declines to intervene, it respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows the relators to maintain the action in the name of the United States; providing, however, that the "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." *Id.* The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the United States only has the right to a hearing when it objects to a settlement or dismissal of the action. *U.S. ex rel. Green v.*

1 *Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d
2 715, 723-25 (9th Cir. 1994).

3 Therefore, the United States requests that, should either the relators or the defendants propose
4 that this action be dismissed, settled, or otherwise discontinued, this Court provide the United States
5 with notice and an opportunity to be heard before ruling or granting its approval.

6 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings
7 filed in this action be served upon the United States. The United States also requests that orders issued
8 by the Court be sent to the government's counsel. The United States reserves its rights to order any
9 deposition transcripts and to intervene in this action, for good cause, at a later date, and to seek dismissal
10 of the relators' action or claim. See 31 U.S.C. § 3730(c)(2), (3). The United States also requests that it
11 be served with all notices of appeal.

12 Finally, we request that the Court unseal: (1) relators' Complaint; (2) the summons, if any; (3)
13 the scheduling order; (4) this Notice of Election to Decline Intervention, with (Proposed) Order to
14 Unseal; and (5) all other matters occurring in this action after the date the Court enters the unsealing
15 order. We request that all other contents of the Court's file in this matter (including, but not limited to,
16 any applications filed by the United States for extensions of the sixty-day investigative period, any
17 applications for partial lifting of the seal, and any orders previously entered in this matter) remain under
18 seal and not be made public or served upon defendants.

19 Respectfully submitted,

20 BRIAN J. STRETCH
21 United States Attorney

22 Dated: May 4, 2016

23 By:

24 
25 NEILL T. TSENG
26 Assistant United States Attorney
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~~[PROPOSED]~~ ORDER TO UNSEAL

The United States having declined to intervene in this action pursuant to the Federal False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the Court rules as follows.

IT IS HEREBY ORDERED that:

1. All current contents of the Court's file in this action shall remain under seal and not be made public or served upon the defendants, except for (1) relators' Complaint; (2) the summons, if any; (3) the scheduling order; (4) this Order; and (5) the accompanying United States' Notice of Election to Decline Intervention, which are hereby unsealed.

2. The relators shall serve the Complaint upon the defendants.

3. The relators shall serve this Order and the accompanying United States' Notice of Election to Decline Intervention upon the defendants after service of the Complaint.

4. The seal shall be lifted as to all other matters occurring in this action after the date of this Order.

5. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in this action, for good cause, at any time.

7. The parties will provide the United States a copy of the notice or petition initiating any appeal and each paper, including briefs, filed in the appeal.

8. All orders of this Court shall be sent to the United States.

9. Should the relators or the defendants propose that this action be dismissed, settled, or otherwise discontinued, the Court will provide the United States with notice and an opportunity to be heard before ruling or granting its approval.

IT IS SO ORDERED.

Dated: 5-11-2016



HON. LAUREL BEELER
United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARINA TRUBNIKOVA, et al.,
Plaintiffs,

v.

MARK F. GENKIN, et al.,
Defendants.

Case No. 3:15-cv-05681-LB
SEALED

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 5/11/2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Neil T. Tseng
United States Attorney's Office
450 Golden Gate Avenue, PO Box 36055
San Francisco, CA 94102

THE UNITED STATES ATTORNEY WILL SERVE PARTIES WHICH ARE NOT LISTED ON THE CERTIFICATE OF SERVICE

Dated: 5/11/2016

Susan Y. Soong
Clerk, United States District Court

By: 
Lashanda Scott, Deputy Clerk to the
Honorable LAUREL BEELER